IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 345 OF 1996

THE STATE OF MAHARASHTRA)
(Through N.M. Gaikwad, R.P.I.)
Satara.) .. APPELLANT (Org.Complainant)

Vs.

UTTAM BANDU DANDAVATE)
R/o Vaduj, Police Station) .. RESPONDENT

Mrs. V. R. Bhosale, APP for appellant
Mr. Manoj J. Bhatt Advocate appointed for respondent

CORAM: SMT. RANJANA DESAI, J.

DATED: 24/10/2007

. The respondent was tried in the IIIrd Court of Joint Judicial Magistrate First Class in Summary Criminal Case No. 1736 of 1992 for offence punishable under Section 145 of the Bombay Police Act ("the said Act" for short). By the impugned judgment and order, the learned Magistrate acquitted him. Being aggrieved by the said judgment and order the State of Maharashtra has preferred this appeal. For the sake of convenience I shall refer to the appellant as the accused.

2. The case of the prosecution is that the accused is a

constable. At the relevant time he was attached to Police Headquarter, Satara. He remained absent from his duties from 7/12/91 to 29/12/91. In-charge of the said Police Headquarter, R.P.I., Shri Gaikwad made report about the absence of the accused to his superior authorities i.e. Superintendent of Police Satara. R.P.I. Gaikwad also sought permission for prosecuting the accused for offence under Section 145 of the said Act. Superintendent of Police accorded the sanction. Pursuant to the sanction the case was registered against the accused under Section 145 of the Bombay Police Act.

3. Charge was framed against the accused under Section 145 of the said Act. Contents of the charge were read over to him. Accused pleaded not guilty to the charge. He claimed to be tried.

4. The defence of the accused was that from 1/12/91 to 6/12/91 he was assigned duty of Alandi Bandobast. On 6/12/91 he fell sick. He gave application for leave to R.P.I. Gaikwad. Due to his illness he could not resume duties from 7/12/91 to 29/12/91. According to him he had not willfully and intentionally withdrawn from his duty.

5. In support of its case, the prosecution examined three witnesses, PW 1 Police Constable Rajendra Laxman Katkar, PW 2 ASI Ramkrishna Desai and PW 3 R.P.I. Shri Nivrutti Gaikwad. The prosecution relied on documentary

evidence such as muster roll, sanction given by the Superintendent of police and the notice issued to the accused.

6. After perusing the evidence on record the learned Magistrate came to the conclusion that since the prosecution had not obtained sanction of the State Government before prosecuting the accused, the prosecution is vitiated. The accused was, therefore, acquitted.

7. I have heard Mrs. Bhosale, Learned APP. She submitted that the impugned judgment and order is perverse and may be set aside. She submitted that learned Magistrate has held that the absence of the accused is proved. He has also held that the accused has not proved that during the relevant period he was ill. According to Mrs. Bhosale, learned Magistrate, therefore, could not have acquitted the accused on the ground that no sanction was obtained. She submitted that the sanction of the Deputy Superintendent of Police is sufficient and learned Magistrate erred in holding that there was no sanction.

8. I have heard Mr. Bhatt, Advocate appointed for the respondent accused. He submitted that the impugned judgment and order is not perverse. He submitted that during the recording of the statement of the accused

under Section 313 of the Criminal Procedure Code, the accused had produced a medical certificate which the learned Magistrate should have admitted in evidence. He submitted that the said certificate indicates that during the relevant period the accused was ill. Learned counsel submitted that in any event about 16 years have gone by. The view taken by the learned Magistrate is a reasonably possible view and hence it should not be disturbed by this court. He urged that the appeal be dismissed.

9. There is no dispute about the fact that the accused was absent from duty without permission from 7/12/91 to 29/12/91. Though the accused has stated that he had applied for leave, no such application is on record.

10. So far as point of sanction is concerned, it is also urged on behalf of the State that appointing as well as removing authority of the accused is Superintendent of Police, Satara and, therefore, sanction accorded by him cannot be faulted. As regards Superintendent of Police being the appointing authority and the removing authority, no evidence is adduced by the prosecution. The period of absence is from 7/12/91 to 29/12/91. About 16 years have passed by. At the time of his examination under Section 313 of the Code of Criminal Procedure the accused produced certificate indicating that during the relevant period, he was ill. It is true that Dr. Limaye who had given the certificate was not examined by the

accused. But in the interest of justice, the learned Magistrate ought to have summoned Dr. Limaye to give evidence. He has not done so.

11. Considering the fact that 16 years have elapsed, in my opinion, a reasonably possible view taken by the learned Magistrate does not deserve to be interfered with in this appeal against the judgment and order of acquittal. The appeal is, therefore, dismissed.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 345 OF 1996

THE STATE OF MAHARKASHTRA .. APPELLANT

VERSUS

UTTAM BANDU DANDAVATE .. RESPONDENT

Mrs. V. R. Bhosale, APP for appellant

Mr. Manoj J. Bhatt Advocate appointed for respondent

CORAM: SMT. RANJANA DESAI, J.

DATED: 24/10/2007

OPERATIVE PART OF THE ORDER

. For the reasons stated in the oral judgment, this court has dismissed the appeal.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 345 OF 1996

DATE OF DECISION:24/10/2007

Submitted for
approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE :

1. Whether Reporters of Local Papers be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices?